

**AGREEMENT FOR PURCHASE OF  
REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS**

*Between*

**BOEING REALTY CORPORATION**

as "Seller"

*and*

**ROBERT HSU**

as "Buyer"

09-04-00 10:19 BOVI

*ma [signature]*

# AGREEMENT FOR PURCHASE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS

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## EXHIBITS

EXHIBIT A	TENTATIVE MAP NO. 52172-03 REFLECTING TENTATIVE RECONFIGURATION OF PROPERTY
EXHIBIT B	GRANT DEED
EXHIBIT C	DECLARATION OF RESTRICTIVE COVENANTS

**AGREEMENT FOR PURCHASE OF REAL PROPERTY  
AND JOINT ESCROW INSTRUCTIONS**

Escrow No. \_\_\_\_\_  
("Escrow")

To: Chicago Title Insurance Company  
("Escrow Holder")  
Attn: Lorri Beasley  
Chicago Title Insurance Company  
16969 Von Karman  
Irvine, CA 92606  
Telephone: (949) 263-2544  
Facsimile: (949) 752-8043

This Agreement for Purchase of Real Property and Joint Escrow Instructions ("Agreement"), dated for reference purposes as of July 10, 2000 ("Execution Date"), is made in Los Angeles County, California, between Boeing Realty Corporation, a California corporation or its designee ("Seller"), and Robert Hsu ("Buyer").

**RECITALS**

- A. Seller owns the Property defined in paragraph 1.
- B. Subject to the terms and conditions of this Agreement, Buyer desires to purchase the Property, and Seller desires to sell the Property.

**TERMS AND CONDITIONS**

**1. SALE OF THE PROPERTY**

**1.1 Purchase and Sale of Property.** Subject to the terms and conditions of this Agreement, Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, that certain unimproved land located in Los Angeles County, California, comprised of approximately 7.07 acres (approximately 307,854 gross square feet) of undeveloped land, and identified as Parcels 1, 2, 3 and 4 on Tentative Map No. 52172-03, a copy of which is attached hereto as **Exhibit "A"** and incorporated herein by this reference ("**Tentative Map**"), being a portion of the Harbor Gateway Center ("**Harbor Gateway Center**"), located in Los Angeles, California, together with all rights, easements, rights-of-way and appurtenances to said land, and all licenses and permits pertaining thereto, held by Seller (collectively, the "**Property**").

**1.2 Necessity of Final Map.** Buyer and Seller acknowledge and agree that the Tentative Map provides for (among other matters) the reconfiguration of a portion of the Harbor Gateway Center as new legal parcels (including without limitation the Property), and that therefore the completion of processing the Tentative Map as a final parcel map in accordance with the Subdivision Map Act and all other applicable laws and

regulations ("**Final Map**") and the recordation of said Final Map are conditions to Closing and to Seller's obligations to sell the Property hereunder. Seller agrees to use reasonable efforts to pursue processing, completion and recordation of the Final Map. The parties acknowledge and agree that completion and recordation of the Final Map (if at all) and satisfaction of all conditions thereto is not certain and will take Seller a significant amount of time. Seller shall not be in default hereunder for failing to achieve completion and recordation of the Final Map if Seller has utilized reasonable efforts to pursue processing, completion and recordation thereof. If any conditions to or costs of processing, completing or recording the Final Map are hereafter imposed upon Seller which are materially more expensive or burdensome upon Seller than those conditions to or costs of same which exist on the date of execution hereof, Seller shall have the right to terminate this Agreement by written notice to Buyer in which event the Deposit shall be returned to Buyer (less one-half of Title and Escrow Company cancellation charges), and Buyer shall have no further rights or obligations under this Agreement or right, title, claim or interest in or to the Property. Subject to the proviso at the end of this sentence, if Seller is unable despite reasonable efforts to complete and record the Final Map on or before July 31, 2000, then Buyer and Seller each shall have the right to terminate this Agreement by written notice to the other party, in which event the Deposit shall be returned to Buyer (less one-half of Title and Escrow Company cancellation charges), and Buyer shall have no further rights or obligations under this Agreement or right, title, claim or interest in or to the Property; provided, however, that if such failure to complete and record the Final Map on or before July 31, 2000 is solely due to failure by Seller to complete those certain two off-site railroad crossings which are Map Conditions ("**Railroad Crossings**"), then Seller shall continue to use reasonable efforts to complete such Railroad Crossings for an additional ninety (90) days, and neither party may terminate this Agreement by reason of such failure to record the Final Map until such the expiration of such ninety (90) day period. Seller shall be responsible (in accordance with paragraph 1.6 and 1.7) for paying all costs of satisfying all conditions to completion and recordation of the Final Map (other than costs of Buyer's reasonable cooperation with Seller's efforts to complete the Final Map, as described in paragraph 1.3).

**1.3 Rights and Obligations Regarding Final Map and EDA Grant.** Buyer agrees to reasonably cooperate (at no cost to Buyer) with Seller's efforts to complete and record the Final Map, including executing any reasonable documents (including without limitation the Final Map and all conveyances and other documents connected therewith) and/or consenting to any reasonable modification(s) to the Tentative Map, so long as such modifications do not increase or reduce the area of the Property by more than 15,000 square feet. Buyer also agrees to reasonably cooperate (at no cost to Buyer) with Seller's efforts to obtain an Economic Development Agency grant concerning the Harbor Gateway Center (including without limitation by executing documents reasonably requested by Seller in connection with Seller's application for such grant), so long as such grant does not adversely affect Buyer's intended use of the Property.

**1.4 Buyer's Contemplated Improvements.** Seller and Buyer acknowledge that Buyer contemplates using the Property for the construction and operation (at Buyer's sole expense) of an office/warehouse facility and related improvements which shall not exceed 153,927 gross square feet of aggregate building(s) area, computed in accordance

with BOMA standards ("**Buyer's Improvements**"). Buyer's maximum cumulative Floor Area Ratio, as defined in the conditions of approval to the Tentative Map for the Property, shall not exceed fifty percent (50%). Buyer shall use diligent efforts, at its sole cost and expense, to process plans and approvals for Buyer's Improvements throughout the duration of the Escrow. No permit, approval or other action that would impose any exaction or condition against, or alter the current land use entitlements or approvals pertaining to, the Property or any other property of Seller shall be given or taken by Buyer prior to the Closing (as defined in paragraph 6) unless made expressly contingent upon the occurrence of the Closing. Notwithstanding the foregoing, Buyer's obtaining of permits and approvals for Buyer's Improvements shall not be a condition to Closing. Buyer shall commence construction of Buyer's Improvements within one (1) year after Closing and obtain a temporary or final certificate of occupancy for Buyer's Improvements no later than two (2) years after Closing; provided, however, that such time limitation(s) shall be extended by any delays in construction directly attributable to nonmonetary Force Majeure Delays (as defined in paragraph 14.22 hereof).

**1.5 Seller's Approval of Buyer's Improvements.** Seller shall have the right to approve all plans and specifications pertaining to Buyer's Improvements, including, but not limited to, Buyer's site plans, elevations, architectural and construction plans, landscape plans, working drawings (including architectural, mechanical, electrical, etc.), civil engineering plans (including all utilities hook-ups) and all construction specifications and materials (and any and all revisions of any of the foregoing). Seller agrees not to unreasonably withhold, condition or delay its consent to such items (and shall in any event provide its conditional approval or disapproval of same within thirty (30) days after Seller's receipt of same) and shall exercise its discretion with the goal of coordinating Buyer's contemplated development of the Property with the overall development of the Harbor Gateway Center and in accordance with the design guidelines adopted under the CC&R's. Buyer shall submit to Seller, Buyer's conceptual drawings for site planning and landscaping on or before fifteen (15) days prior to expiration of the Feasibility Period. Seller shall conditionally approve or disapprove Buyer's conceptual drawings on or before fourteen (14) days after receipt of same by Seller. In the event that Seller fails to respond within the stated response periods set forth in this paragraph 1.5, such failure shall conclusively be deemed to constitute Seller's approval of the materials or matters so submitted. In addition to the foregoing, Buyer acknowledges and agrees that it must comply (before and at all times after Closing) with the CC&R's (as hereafter defined) as regards Buyer's Improvements.

## **1.6 Offsite Improvements.**

**1.6.1 Seller's Obligations; City Reimbursement.** Seller and Buyer acknowledge that governmental authorities have imposed certain conditions (the "**Map Conditions**") to the approval of the Final Map (including without limitation conditions set forth in the environmental impact report for the Harbor Gateway Center), and that such conditions require or may require (among other matters) the installation of certain offsite improvements. Seller hereby agrees to fulfill at Seller's sole expense either before or after Closing (at Seller's sole election) all of the Map Conditions; provided that all offsite improvements which are Map Conditions and which constitute conditions to Buyer's obtaining a temporary or final certificate of occupancy for Buyer's Improvements at



Seller's sole option shall be either (a) completed by Seller by the date on which Buyer is prepared to obtain such temporary or final certificate of occupancy, or (b) the subject of a completion bond posted by Seller to the extent the same are not completed by the date on which Buyer is prepared to obtain such temporary or final certificate of occupancy. Seller and Buyer acknowledge that Seller may seek reimbursement and or credits from governmental authorities and/or subdivisions for portions of the cost of satisfying the Map Conditions and any and all other offsite improvements performed at Seller's cost in connection with the Harbor Gateway Center, and Buyer and Seller agree that Seller shall receive the entire benefit of any such reimbursement(s) and/or credits whether granted by governmental subdivisions in the form of fee waivers or rebates, tax relief, tax credits, grants, loans, discounts, performance of work or provision of services or otherwise (the "City Reimbursement").

**1.6.2 Utilities.** Seller and Buyer acknowledge (subject to Seller's obligations under paragraph 1.6.1) that Seller shall install or cause to be installed either before or after Closing electrical, telephone, water, gas, sewer and storm drain improvements in the Harbor Gateway Center, which utilities and/or services shall be made available within the streets or rights of way at reasonable locations adjacent to the Property so that Buyer (at its sole cost and expense) may hook up to such utilities and improvements to provide service to the Property meeting ordinary governmental and utilities service provider requirements. Subject to Seller's obligations under paragraph 1.6.1, Buyer shall be obligated (at its sole cost) to connect the Property and the Buyer Improvements to such electrical, telephone, water, gas, sewer and storm drain facilities and/or any other utilities and/or services which Seller may elect to install within such streets or rights of way, including without limitation any telecommunications facilities and/or services, together with such additional improvements that any governmental agency having jurisdiction may require to be installed on or adjacent to the Property as a condition to approval of Buyer's Improvements. Buyer's obligations to interconnect the Property and Buyer Improvements to such utilities and/or services shall include without limitation installing (at Buyer's sole expense) any and all necessary or appropriate interconnection facilities, trench(es), conduit(s), box(es), handhole(s), vault(s) and/or related equipment.

**1.7 Harbor Gateway Center CC&R's.** Buyer acknowledges and agrees that the Property shall be a part of the Harbor Gateway Center, a coordinated development which is subject to one or more Declaration(s) of Covenants, Conditions and Restrictions which have been prepared and recorded by Seller ("CC&R's"). Seller has delivered (or shall deliver with the Property Documents) to Buyer the recorded CC&R's. At any time prior to the Closing, Seller reserves the right to modify or supplement the CC&R's from time to time in Seller's sole and absolute discretion, provided, however, that Buyer shall have the right to approve (prior to the Closing) of such changes to the CC&R's in accordance with the provisions of paragraph 4.2.1 hereof. After the Closing, modification or supplementing of the CC&R's (if any) will be governed by the terms of the CC&R's. Buyer acknowledges and agrees that during the period that the Property is owned by Buyer (or any party in which Buyer or any party controlling, controlled by or under common control with Buyer has a voting or ownership interest), Buyer consents and agrees to be personally bound by all of the easements, rights, covenants, conditions, restrictions and charges encumbering the Property as declared in the CC&R's. Buyer

agrees that all easements set forth in the CC&R's are appurtenant, and that all rights, covenants, conditions, restrictions, liens and charges set forth therein run with the Property and all other real property described in the CC&R's. Among other obligations under the CC&R's, Buyer acknowledges and agrees that it shall be responsible, at its sole cost and expense, for maintaining the area within the public right(s) of way along the street(s) adjacent to the Property (including without limitation sidewalks, landscaping, curbs, lighting and such items). Furthermore, until the internal and private streets located within the Harbor Gateway Center are dedicated as public streets, Buyer shall be responsible for its proportionate share of maintenance, repair and/or restoration of same, which proportionate share shall be computed as set forth in the CC&R's. Under the CC&R's, among other obligations, Buyer shall also be responsible for its proportionate share (computed on the same basis as aforesaid) of landscaping, maintenance, repair and replacement of common areas within the Harbor Gateway Center, railroad crossings connected with the Harbor Gateway Center, and signage, sidewalk and landscaping areas in, near and about the Harbor Gateway Center (as well as any and all other expenses and assessments, if any, of the Association for the Harbor Gateway Center to be formed under the CC&R's). Furthermore, Buyer acknowledges and agrees that it shall be solely responsible for (at Seller's sole election) either paying directly and/or reimbursing Seller (or its successors or assigns) on demand for Buyer's proportionate share (as reasonably determined by Seller from time to time) of all costs and expenses of planting, installing and maintaining any and all trees and related landscaping which are now or may hereafter be required to be located on the Property or on or near any public right(s) of way located adjacent to or near the Property, as determined by the City of Los Angeles Chief Forester, and/or as required pursuant to that certain Covenant and Agreement between Seller and the City of Los Angeles recorded November 19, 1998 as Instrument No. 98-2124227, Official Records of Los Angeles County, California, affecting the Center. Notwithstanding the foregoing or any contrary provision hereof, Seller shall pay for (and Buyer will owe Seller no reimbursement obligation concerning) installation of street trees and grass in accordance with Map Conditions along the public sidewalk which will border the north side of the Property as of Closing (although Buyer will be responsible for maintenance of same from and after Closing in accordance with applicable recorded documents).

**1.8 Restrictive Covenants Concerning the Property.** Buyer acknowledges and agrees that the grant deed described in paragraph 6.3.1 hereof and/or a separately recorded document shall contain restrictive covenants concerning the Property in substantially the form of the Declaration of Restrictive Covenants attached hereto as Exhibit C and incorporated herein by this reference, which restrictive covenants shall bind Buyer, its successors and assigns, and shall bind and run with the Property.

## **2. OPENING OF ESCROW**

When this Agreement, fully signed, or signed in counterparts, and the Deposit (as defined in paragraph 3.2.1) are delivered to Escrow Holder, Escrow shall be deemed opened ("**Opening of Escrow**"). Escrow Holder shall immediately notify Buyer, Seller and their attorneys, in writing, of the date of Opening of Escrow. Buyer and Seller agree that the Opening of Escrow shall occur on or before two (2) business days after the date of execution and delivery hereof.

### 3. PURCHASE PRICE

#### 3.1 Purchase Price.

The purchase price for the Property shall be Fourteen and No/100 Dollars (\$14.00) per gross square foot of area of the Property (the "**Purchase Price**"), which results in a Purchase Price of Four Million Three Hundred Nine Thousand Nine Hundred Fifty Six Dollars (\$4,309,956.00), based upon 307,854 gross square feet of area of the Property. To the extent that Buyer and Seller reasonably determine pursuant to a civil engineering survey that the gross area of the Property after recordation of the Final Map is greater or lesser than 307,854 gross square feet, then the Purchase Price for the Property shall be increased or decreased at Closing by \$14.00 per gross square foot of the excess or shortfall in such area above or below 307,854 gross square feet.

#### 3.2 Payment of Purchase Price.

The Purchase Price shall be paid as follows:

**3.2.1** Concurrently with delivery to Escrow Holder of a fully executed copy of this Agreement, Buyer shall deliver to Escrow Holder a deposit of Fifty Thousand Dollars (\$50,000.00) (the "**Initial Deposit**"). The Initial Deposit shall be in the form of wire transfer, cash or a certified or bank cashier's check. On or before the Feasibility Deadline (unless Buyer shall have delivered the Non-Feasibility Notice pursuant to paragraph 4.3.2), Buyer shall deposit into Escrow additional cash in the sum of Fifty Thousand Dollars (\$50,000.00) (the "**Additional Deposit**"). The Initial Deposit and, if applicable, the Additional Deposit, and all interest accrued thereon while held by Escrow Holder and shall hereinafter be collectively referred to as the "**Deposit**." Escrow Holder shall place the Deposit in an interest-bearing escrow account reasonably acceptable to Buyer. Within two (2) business days after Escrow Holder's receipt (if any) of the Additional Deposit, Escrow Holder shall distribute the entire Deposit to Seller. At the Closing (if any), Seller shall credit the Deposit to the Purchase Price. If this Escrow fails to close under this Agreement due to Buyer's breach of this Agreement, then the Deposit shall be retained by Seller as liquidated damages under paragraph 8.2 ("**Liquidated Damages**"). If Escrow fails to close due to failure of any condition(s) to Closing, then the Deposit (less one-half of all title and Escrow charges, except as otherwise provided herein) shall be returned to Buyer, subject to the provisions of paragraph 8.1 hereof. If Buyer fails to fully and timely pay all or any portion of the Deposit as and when required hereunder, then Seller shall at any time thereafter have the right to terminate this Agreement due to Buyer's breach by written notice to Buyer, whereupon this Agreement shall automatically terminate and Seller may pursue any and all rights or remedies against Buyer by reason of Buyer's breach of this Agreement.

**3.2.2** At or before 5:00 p.m. on the last business day immediately before Close of Escrow, Buyer shall deposit into Escrow immediately available federal funds in an amount which, when added to the Deposit, will equal the Purchase Price, plus any additional amounts required to be paid by Buyer in order to close Escrow hereunder.

#### 4. CONDITIONS PRECEDENT TO BUYER'S PERFORMANCE

Buyer's obligation to purchase the Property is subject to the satisfaction or waiver of all the conditions set forth below in this paragraph 4 within the applicable time periods specified. If any of these conditions is not satisfied within the applicable time period, Buyer's sole remedy shall be either to terminate this Agreement as set forth below or to immediately waive in writing any or all of the conditions, in whole or in part, and to proceed to close Escrow.

##### 4.1 Issuance of Title Policy.

Chicago Title Insurance Company (the "**Title Company**") shall be in a position to issue the Title Policy upon Close of Escrow, as described in paragraph 7.

##### 4.2 Approval of Preliminary Report.

**4.2.1** Within ten (10) business days following the Opening of Escrow, Seller shall cause Escrow Holder to furnish Buyer and Seller at Seller's expense, a current C.L.T.A. standard coverage preliminary report of title and/or a pro forma CLTA owner's title policy (reflecting title to the Property assuming recordation of the Final Map) for the Property (the "**P.R.**"), together with copies of all documents shown as exceptions in the P.R. In addition, Seller shall make available for Buyer's inspection and copying at Seller's principal place of business during standard business hours within five (5) business days after the Opening of Escrow such survey(s) of the Property as is currently in Seller's possession. Within thirty (30) days after Buyer's receipt of the P.R., together with copies of all documents referenced therein, Buyer may disapprove the P.R. by written notice to Escrow Holder and Seller (the "**Notice of Defect**") specifying the matters shown in the P.R., if any, which are disapproved by Buyer ("**Disapproved Exception**") and stating the specific grounds for each Disapproved Exception. If Seller and Escrow Holder have not received the Notice of Defect from Buyer on or before 12 o'clock noon on the last day of the 30-day period, this title contingency shall be conclusively deemed satisfied in all respects. In the event that Seller elects to modify or supplement any proposed CC&R's prior to Closing pursuant to paragraph 1.7 hereof, Buyer shall have ten (10) business days after the date Buyer receives such modified or supplemented CC&R's to disapprove such CC&R's by delivering to Seller a written Notice of Defect disapproving the CC&R's, in which event such modified or supplemented CC&R's shall constitute a Disapproved Exception. In the event that Buyer does not deliver such Notice of Defect concerning such modified or supplemented CC&R's within said ten (10) business day period, then Buyer shall be conclusively deemed to have approved the modified or supplemented CC&R's.

**4.2.2** Provided Buyer shall have timely and properly delivered Buyer's Notice of Defect, Seller, within five (5) business days after receiving the Notice of Defect, shall deliver to Buyer a notice stating whether or not Seller will use its reasonable efforts to cure the Disapproved Exception(s) on or before Close of Escrow. Seller's failure to give timely notice in response to Buyer's Notice of Defect shall constitute Seller's notice that it will not use its reasonable efforts to cure the Disapproved Exception(s) on or before Close of Escrow. If Seller will not use its reasonable efforts to

cure the Disapproved Exception(s) on or before Close of Escrow, Buyer shall be deemed to have terminated the Agreement unless Buyer delivers to Seller a written notice waiving the Disapproved Exceptions(s) within two (2) business days after Seller's notice to that effect has been given or deemed given. If the Agreement is terminated as provided in this paragraph, the Deposit shall be returned to Buyer (and Seller shall pay all Escrow and Title Company charges), Buyer shall have no further rights or obligations under this Agreement or right, title or interest in the Property, and Escrow shall automatically terminate.

**4.2.3** If Seller notifies Buyer in writing, as provided above, that it will use its reasonable efforts to cure a Disapproved Exception and then fails to cure that Disapproved Exception as provided in Seller's notice, Buyer, as its only remedy for Seller having failed to cure the Disapproved Exception, may elect either to (i) waive the Disapproved Exception in writing within two (2) business days after Seller's delivery of written notice to Buyer that Seller is unable or unwilling to cure the Disapproved Exception, or (ii) terminate the Agreement. If Buyer elects to terminate the Agreement, the Deposit shall be returned to Buyer (and Seller shall pay all Escrow and Title Company charges), Buyer shall have no further rights or obligations under this Agreement or right, title or interest in the Property, and Escrow shall automatically terminate.

**4.2.4** Seller's "reasonable efforts", as used in this paragraph 4.2, shall not include any obligation of Seller to incur any liability, to spend any money or to file a lawsuit or maintain any legal action to correct or eliminate any exceptions to title. The issuance of a title policy endorsement by Title Company in a form reasonably acceptable to Buyer on or before Close of Escrow with respect to any Disapproved Exception(s) shall be conclusively deemed to cure the Disapproved Exception(s).

### **4.3 Confirmation of Feasibility.**

**4.3.1** Buyer shall have from the date of Opening of Escrow until seventy five (75) days thereafter at 5:00 p.m. (the "**Feasibility Period**"), to confirm in Buyer's sole and absolute discretion that Buyer is satisfied with the physical condition of the Property (including without limitation all structural, seismic, mechanical, environmental and all other physical aspects and conditions of the Property), that Buyer is satisfied with all financial, legal and other aspects of the Property (including without limitation expenses, contracts, laws, ordinances, rules, regulations and legal proceedings affecting the Property) and that Buyer can feasibly use the Property in accordance with Buyer's plans (the "**Feasibility Contingency**"). Buyer shall be solely responsible for determining existing zoning classifications, building regulations, governmental entitlements, development requirements and all other legal matters applicable to the Property. To assist Buyer's feasibility study, and provided that Buyer has executed and delivered a confidentiality and nondisclosure agreement reasonably acceptable to Seller, Seller shall, within ten (10) business days after Opening of Escrow, make available to Buyer for inspection and copying, at Buyer's sole cost, during normal business hours at Seller's offices or such place in Long Beach as Seller shall designate, copies of the following documents to the extent they are in Seller's possession or under Seller's control (collectively, the "**Property Documents**"): (i) all service, labor, maintenance or other

contracts affecting the Property; (ii) copies of the most recent two years' property tax bill(s) for the Property; (iii) copies of all soils and/or groundwater reports and all other environmental, hazardous waste, toxic materials and/or geological studies, grading maps and/or plans, topographic maps, environmental assessments, zoning studies, soils reports, site plans, environmental impact report(s) and similar information respecting the Property; (iv) copies of any Environmental Impact Report, recorded and/or proposed CC&R's and any Design Guidelines concerning the Property; and (v) all other material, unprivileged documents concerning the Property (specifically excluding, however, any appraisals, valuations and/or marketing studies). Seller makes no representations or warranties concerning the sufficiency or accuracy of the Property Documents (except that Seller represents that it shall not withhold any material environmental reports or information concerning the Property by reason of Seller's assertion of attorney-client or work product privilege(s)), and Seller shall not be liable to Buyer in any way whatsoever for any insufficiency or inaccuracy of the Property Documents. Buyer shall be solely responsible for determining the sufficiency and accuracy of the Property Documents. Seller shall provide Buyer and/or Buyer's consultants with access to all current and future findings, results, plans, reports and information generated and/or obtained by Seller in connection with the environmental condition of the Property, so long as Buyer has executed and fully performed a confidentiality and nondisclosure agreement in form and content acceptable to Seller in its sole and absolute discretion. Notwithstanding the foregoing or any contrary provision hereof, Buyer shall have no right to conduct any Phase II environmental assessment(s) on the Property (regarding soil or groundwater), without first obtaining Seller's prior written consent to the proposed scope of such Phase II assessment(s), which may be given or withheld in Seller's sole and absolute discretion. In the event that Seller consents to any of the matters described in the immediately preceding sentence, Seller reserves the right to take such split samples at Seller's expense as Seller deems appropriate.

**4.3.2** If within the Feasibility Period Buyer determines in Buyer's sole discretion that it is not feasible for Buyer to purchase the Property, Buyer shall notify Seller and Escrow Holder in writing, specifying the reason(s) for Buyer's determination (the "**Non-Feasibility Notice**"). If Buyer determines that it is feasible for Buyer to purchase the Property, Buyer shall so notify Seller in writing on or before the Feasibility Deadline. If Seller or Escrow Holder has not received the Non-Feasibility Notice from Buyer on or before 5:00 p.m. on the last day of the Feasibility Period (the "**Feasibility Deadline**"), then the Feasibility Contingency shall be conclusively deemed satisfied. If Seller and Escrow Holder receive the Non-Feasibility Notice on or before the Feasibility Deadline, then the Feasibility Contingency shall be deemed not satisfied, and Escrow and this Agreement shall automatically terminate, Escrow Holder shall return the Deposit (less one-half of all Escrow and Title Company charges) to Buyer (provided that Buyer has not otherwise breached this Agreement), and Buyer shall have no further rights or obligations under this Agreement or right, title or interest in the Property.

**4.3.3** At reasonable times, Buyer and its representatives, agents, and contractors shall have a limited license to enter upon the Property, at Buyer's own cost and expense, in connection with Buyer's proposed purchase of the Property, including, without limitation, the right to conduct the studies and inspections referred to in paragraph 4.3.1. Buyer, its representatives, agents and contractors shall (i) perform all

work permitted under this paragraph in a diligent, expeditious and safe manner, (ii) use best efforts to minimize any disruption and/or interference with use, possession and business operations on or near the Property, (iii) not allow any dangerous or hazardous condition to continue beyond the completion of the work permitted under this paragraph, (iv) comply with all applicable laws and governmental regulations, (v) keep the Property free and clear of all mechanics' and materialmen's liens or other liens arising out of the entry and work performed under this paragraph by Buyer, its representatives, agents and contractors, and (vi) promptly deliver to Seller at no charge copies of all inspection reports, environmental assessments and other analyses, reports and/or appraisals obtained by Buyer concerning the Property (other than the Property Documents), whether or not Buyer delivers a Non-Feasibility Notice and/or closes Escrow hereunder (it being expressly agreed that Buyer shall be obligated to deliver such information to Seller notwithstanding termination of this Agreement or any other provision hereof). After any entry, Buyer shall immediately restore the Property to the same condition as before Buyer entered the Property. Buyer shall indemnify, defend (with counsel acceptable to Seller provided that Seller's choice of counsel is reasonable) and hold harmless Seller, its affiliates, subsidiaries, officers, directors, shareholders, employees, independent contractors, partners, representatives, agents, successors and assigns (collectively, the "**Indemnified Parties**") from and against all claims, losses, liabilities, damages or expenses (including, without limitation, attorneys' fees) arising from or relating to the entry on the Property by Buyer, its representatives, agents or contractors. Buyer's obligation to indemnify and defend Seller shall survive the termination or Close of Escrow and shall not be limited by any insurance required under paragraph 4.3.4. This limited license is irrevocable by Seller during the Feasibility Period (other than for good cause) and shall in any event be deemed revoked upon termination of this Agreement.

**4.3.4** Buyer agrees to maintain worker's compensation and commercial general liability insurance policies acceptable to Seller to cover Buyer's activities on the Property, and Buyer agrees to keep the Property free and clear of all mechanics' and materialmen's liens or other liens arising out of any of its activities or those of its representatives, agents or contractors at all times prior to Closing. Before Buyer enters the Property, Buyer shall deliver to Seller a certificate of insurance evidencing insurance coverage in compliance with the terms of this paragraph. Buyer shall maintain and keep in effect, at Buyer's sole expense, at all times during the period of this Escrow, a commercial general liability insurance policy having a combined liability limit of at least One Million Dollars (\$1,000,000) and property damage limits of at least Two Million Dollars (\$2,000,000). The insurance policy shall be primary and noncontributing with any insurance which may be carried by Seller, and shall name Seller as an additional insured and co-payee. The insurance policy shall also provide that it may not be canceled or modified without at least thirty (30) days prior written notice to Seller.

#### **4.4 Deposit of Documents.**

Seller shall have signed, acknowledged and delivered all documents and instruments to Escrow Holder as required in paragraph 6.3.

#### **4.5 Validity of Representations and Warranties.**

All representations and warranties by Seller in this Agreement shall be true on Close of Escrow as if made at that time.

#### **4.6 Performance of Covenants; Release of Deposit to Seller.**

Seller shall have timely performed all of its covenants under this Agreement.

#### **4.7 Recordation of Final Map, Installation of Utilities.**

Seller shall have (a) caused the Final Map to be recorded and (b) completed and/or posted a completion bond regarding any offsite improvements constituting Map Conditions (including without limitation utilities as provided in Section 1.6.1 and/or 1.6.2. hereof).

#### **4.8 Rough Grade and Compaction of Property by Seller.**

Seller shall be able to deliver the Property to Buyer in rough grade condition (to 90% compaction), with temporary or permanent power sufficient for Buyer's construction activities reasonably available to the Property in a street or right of way adjacent to the Property, together with sufficient physical access to commence construction of Buyer's Improvements on the Property.

#### **4.9 Fire Pump Contingency.**

Seller shall have completed the demolition and removal of the supplemental water supply for fire purposes currently located on Parcel 1 of the Property (including the existing tank, piping, pump house, pumps and related equipment and fixtures).

#### **4.10 Buyer's Approval of No Further Action Letter and Risk Assessment.**

Buyer shall not have disapproved (in a writing delivered by Buyer to Seller within ten (10) days after receipt by Buyer from Seller) in Buyer's reasonable discretion (a) a "No Further Action" letter concerning the top twelve (12) feet of soil on the Property issued by Los Angeles Regional Water Quality Control Board (or other governmental environmental agency responsible for issuance of such No Further Action Letter) ("NFA"), or (b) an environmental Risk Assessment concerning the Property in a form submitted to Los Angeles Regional Water Quality Control Board, Department of Toxic Substances Control, or other governmental environmental agency responsible for approval of such Risk Assessment) ("RA"). Failure by Buyer to disapprove in writing the NFA or the RA, respectively, within such ten (10) day period shall conclusively be deemed to be Buyer's approval thereof, respectively, and this condition precedent to Closing shall be conclusively deemed satisfied.

### **5. CONDITIONS PRECEDENT TO SELLER'S PERFORMANCE**



Seller's obligation to sell the Property is subject to the satisfaction or waiver of all conditions set forth below within the applicable time periods specified.

#### 5.1 Deposit of Documents and Funds.

Buyer shall have signed, acknowledged and timely delivered all documents, instruments and funds to Escrow Holder as required in paragraph 6.2.

#### 5.2 Issuance of Title Policy.

Title Company shall be in a position to issue the Title Policy upon Close of Escrow, as described in paragraph 7.

#### 5.3 Validity of Representations and Warranties.

All representations and warranties by Buyer in this Agreement shall be true on Close of Escrow as if made at that time.

#### 5.4 Performance of Covenants.

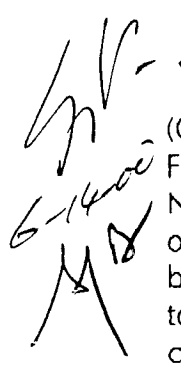
Buyer shall have timely performed all of its covenants under this Agreement.

#### 5.5 Approval of Buyer's Improvements.

Seller shall have approved Buyer's Improvements, as provided in paragraph 1.5.

### 6. CLOSING OF ESCROW

#### 6.1 Closing Date.

 6-14-00  
6.1.1 The Closing shall occur (if at all) on or before 5:00 p.m. (California time) on the date which is fifteen (15) calendar days after the later of the Feasibility Deadline (provided that Buyer has not then timely delivered the Notice of Non-Feasibility) or the date upon which all conditions precedent to the Closing in favor of Buyer are satisfied; provided, however, that if the Closing has not occurred on or before October 31, 2000 (or December 1, 2000, in the event such failure to close is due to failure to record the Final Map due to inability by Seller despite reasonable efforts to complete the Railroad Crossings as described in paragraph 1.2 hereof), other than due to default by Seller hereunder, then Seller shall have the right to terminate this Agreement by delivery of written notice of termination to Buyer, in which case this Agreement shall thereupon automatically terminate, the Deposit shall be returned to Buyer (less one-half of Title and Escrow Company cancellation charges), and Buyer shall have no further rights or obligations under this Agreement or right, title, claim or interest in or to the Property.

6.1.2 The terms "Close of Escrow," "Closing Date" and/or "Closing" are used in this Agreement to mean the time and date (which shall be as provided in paragraph 6.1) on which the Grant Deed (as defined below) is filed for recording by Escrow Holder in the Office of the Los Angeles County Recorder.

## 6.2 Deposits to be Made by Buyer.

At or before 5:00 p.m. on the last business day immediately before Close of Escrow, Buyer shall deliver (or cause to be delivered) to Escrow Holder:

6.2.1 Immediately available and good funds (United States dollars) in the amount which in addition to the Deposit will equal the Purchase Price;

6.2.2 If Buyer is a corporation or a partnership, a certified copy of a corporate resolution or a partnership authorization, as the case may be, adopted by Buyer authorizing purchase of the Property, or if Buyer is a trustee, a Certification by Trustee in form and content satisfactory to Seller; and

6.2.3 Any additional funds and/or instruments, signed and properly acknowledged by Buyer if appropriate, as may be necessary to comply with this Agreement.

## 6.3 Deposits to be Made by Seller.

At or before 5:00 p.m. on the last business day immediately before the Close of Escrow, Seller shall deliver to Escrow Holder:

6.3.1 A grant deed conveying Seller's interest in the Property, properly signed and acknowledged by Seller, in the form of **Exhibit "B"** attached hereto and incorporated herein by this reference;

6.3.2 A Certification of Non-Foreign Status certifying, pursuant to Internal Revenue Code section 1445, that Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as these terms are defined in Internal Revenue Code and Income Tax Regulations and a Withholding Exemption Certificate, Franchise Tax Board Form 590, certifying to Buyer that Seller has a permanent place of business (as defined in Form 590) in California); and

6.3.3 Any additional funds and/or instruments, signed and properly acknowledged by Seller if appropriate, as may be necessary to comply with this Agreement.

## 7. TITLE INSURANCE

At the Closing, Title Company shall issue and deliver to Buyer, at Seller's expense, with a copy to Seller, its C.L.T.A. Standard Owner's Policy of Title Insurance (the "Title Policy"), with liability in the amount of the Purchase Price insuring fee title to the Property as vested in Buyer, free of liens and encumbrances, except the following:

(a) All nondelinquent general and special real property taxes and assessments;

(b) Easements, encumbrances, covenants, conditions and restrictions, reservations, rights-of-way and other exceptions and matters of record of whatever kind or nature as approved or accepted by Buyer under paragraph 4.2;

(c) Any encumbrance placed of record by or through the acts or omissions of Buyer; and

(d) Any other title exceptions which Buyer shall approve, create, suffer, assume, cause or permit.

Buyer shall have the right to require the Title Company as a condition to Closing to issue the Title Policy as an A.L.T.A. Standard Owner's Policy of Title Insurance, subject to the title exceptions described above; provided, however, that Buyer shall pay the cost of the Title Policy in excess of a standard C.L.T.A. Standard Owner's Policy of Title Insurance (including all endorsements and survey costs, if any), and further provided that there shall be no delay in Close of Escrow as a result of Buyer requiring an A.L.T.A. (as opposed to a C.L.T.A.) Title Policy.

The issuance of the Title Policy shall be in lieu of any express or implied warranty of Seller concerning title to the Property. Buyer agrees that its only remedy for damages incurred by reason or any defect in title shall be against the Title Company.

## **8. DEFAULT**

If Seller fails or refuses to comply with its obligation to sell the Property, Buyer's sole remedy shall be to either (i) terminate this Agreement, in which event in full satisfaction of all damages suffered by Buyer, Buyer shall be entitled to the prompt return of the Deposit, or (ii) sue Seller for damages for breach of this Agreement but only if such suit is commenced within six (6) months after the date of Seller's failure or refusal to comply with the terms of this Agreement.

If Buyer defaults under the terms of this Agreement, for any reason other than Seller's default hereunder, Seller shall be entitled to receive the entire Deposit, plus interest accrued thereon, as liquidated damages, as hereinafter set forth.

**8.1** If the Close of Escrow fails to occur because of either party's default, the defaulting party shall be liable for all Escrow cancellation and Title Company charges, in addition to any other damages or remedies due the nondefaulting party (except as limited by paragraph 8.2). If Close of Escrow fails to occur other than due to either party's default, then each party shall pay one-half of all Escrow and Title Company charges.

**8.2** IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT FOR ANY REASON OTHER THAN SELLER'S DEFAULT AFTER SATISFACTION OR WAIVER OF THE CONDITIONS TO BUYER'S PERFORMANCE SET FORTH IN PARAGRAPH 4, SELLER SHALL BE RELEASED FROM

ALL ITS OBLIGATIONS UNDER THIS AGREEMENT AND SHALL BE ENTITLED TO OBTAIN AND KEEP THE DEPOSIT AS LIQUIDATED DAMAGES. IN LIGHT OF THE DIFFICULTY THE PARTIES WOULD HAVE IN DETERMINING SELLER'S ACTUAL DAMAGES AS A RESULT OF SUCH A BREACH FOR, AMONG OTHER THINGS, TAKING OR HAVING THE PROPERTY OFF THE MARKET, IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES THAT THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE EXTENT TO WHICH SELLER WOULD BE DAMAGED BY BUYER'S FAILURE TO CONSUMMATE THIS PURCHASE. IMMEDIATELY UPON ANY DEFAULT BY BUYER UNDER THIS AGREEMENT, BUYER HEREBY IRREVOCABLY AUTHORIZES AND INSTRUCTS ESCROW HOLDER TO DISBURSE THE DEPOSIT (TO THE EXTENT HELD BY ESCROW HOLDER) TO SELLER UPON THE DEMAND OF SELLER ALONE. IN CONSIDERATION OF THE PAYMENT OF THE LIQUIDATED DAMAGES, SELLER WILL BE DEEMED TO HAVE WAIVED ALL OF ITS CLAIMS AGAINST BUYER FOR DAMAGES OR RELIEF AT LAW OR IN EQUITY IF, BUT ONLY IF, BUYER HAS SIGNED AND DELIVERED TO ESCROW HOLDER WITHIN TEN (10) BUSINESS DAYS AFTER NOTICE FROM SELLER OF BUYER'S DEFAULT, ESCROW CANCELLATION INSTRUCTIONS AND ALL OTHER DOCUMENTS REASONABLY REQUIRED BY ESCROW HOLDER (IF ANY) TO UNCONDITIONALLY INSTRUCT AND ENABLE ESCROW HOLDER TO CANCEL ESCROW AND PAY SELLER THE DEPOSIT AND INTEREST ACCRUED THEREON THEN HELD BY ESCROW HOLDER. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS PARAGRAPH 8.2, IF BUYER BRINGS AN ACTION AGAINST SELLER FOR AN ALLEGED BREACH OR DEFAULT BY SELLER OF ITS OBLIGATIONS UNDER THIS AGREEMENT, RECORDS A LIS PENDENS OR OTHERWISE ENJOINS OR RESTRICTS SELLER'S ABILITY TO SELL AND TRANSFER THE PROPERTY, OR REFUSES TO CONSENT TO OR INSTRUCT RELEASE OF THE DEPOSIT TO SELLER IF REQUIRED BY ESCROW HOLDER (EACH A "BUYER'S ACTION"), SELLER SHALL NOT BE RESTRICTED BY THE PROVISIONS OF THIS PARAGRAPH 8.2 FROM BRINGING AN ACTION AGAINST BUYER SEEKING EXPUNGEMENT OR RELIEF FROM ANY LIS PENDENS, INJUNCTION OR OTHER RESTRAINT, AND RECOVERING FEES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) WHICH SELLER MAY SUFFER OR INCUR AS A RESULT OF ANY BUYER'S ACTION SHOULD SELLER BE THE PREVAILING PARTY; AND THE AMOUNT OF ANY SUCH FEES, COSTS AND EXPENSES AWARDED TO SELLER SHALL BE IN ADDITION TO THE LIQUIDATED DAMAGES SET FORTH HEREIN. BUYER AND SELLER SPECIFICALLY WAIVE THEIR RESPECTIVE RIGHTS PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1680, 3384, 3387 AND 3389. NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION(S) OF THIS AGREEMENT, BUYER SHALL NOT BE DEEMED IN DEFAULT HEREUNDER (AND SELLER MAY NOT EXERCISE RIGHTS AND REMEDIES ATTRIBUTABLE THERETO) BY REASON OF ANY NONMONETARY BREACH BY BUYER OF THIS AGREEMENT, UNLESS SUCH BREACH CONTINUES UNCURED FOR TWO (2) BUSINESS DAYS AFTER SELLER DELIVERS TO BUYER WRITTEN NOTICE OF SUCH ALLEGED NONMONETARY BREACH.

\_\_\_\_\_  
Buyer's  
Initials

  
\_\_\_\_\_  
Seller's  
Initials

## 9. PROPERTY "AS IS"; RELEASE

9.1 Except as expressly provided in paragraph 9.6 below, Buyer agrees that (i) the sale of the Property is concluded without warranties, representations or guarantees made by Seller of any kind or nature, express or implied, except as expressly set forth herein; (ii) the Property is purchased by Buyer on an "AS-IS," "WHERE IS," "WITH ALL FAULTS" basis with regard to all matters, including without limitation the physical condition of the Property and improvements, all agreements and legal matters now or hereafter affecting the Property, all environmental matters and conditions, and all other material facts and/or issues, now or hereafter existing or arising, known or unknown; (iii) all reports, studies, analyses, maps, drawings, materials and other documents are made available by Seller to Buyer only as an accommodation to Buyer (with no representations or warranties by Seller as to their completeness or accuracy) and not with the intent that these documents be relied on by Buyer, except to the extent that Buyer has independently confirmed the validity of those documents and the information contained in them; (iv) at the Closing (if any), Buyer hereby expressly assumes liability for all matters described in this paragraph 9 (including without limitation the physical, environmental and seismic condition of the Property, known or unknown, and/or past, present or future); and (v) Buyer's decision to purchase the Property is based only on the investigation, study and analysis of all aspects of the Property as made by Buyer and/or Buyer's agents, employees, representatives and/or independent contractors (collectively, "Buyer's Investigation"). Except as otherwise specifically provided in this Agreement, it is expressly understood by Buyer and Seller that all statements and representations made by Seller and Seller's agents and independent contractors (a) are intended by Buyer and Seller to be made only as an accommodation to Buyer and Buyer's Investigation and not in lieu of Buyer's Investigation, and (b) are not to be relied or acted on by Buyer.

9.2 Except as expressly set forth herein (including without limitation in paragraph 9.6 below), Buyer accepts the Property "AS IS," "WHERE IS," and "WITH ALL FAULTS" and conditions thereon. Seller makes no representations or warranties, expressed or implied, with respect to the physical condition or environmental condition of the Property and the surrounding property (including without limitation the seismic condition of the Property, any latent or patent defects concerning any and all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), compliance or noncompliance with any federal, state or local planning, building, fire, seismic, environmental, health or safety or any other statute, laws, ordinances, directives or regulations, (including without limitation the Americans with Disabilities Act), or any economic aspects of the Property (including without limitation its value, desirability, developability and/or economic incentives, if any, available concerning the Property whether by reason of its designation as being located within an "enterprise zone" or otherwise). Except as expressly provided and limited in paragraph 9.6 below, Seller shall have no indemnification, reimbursement or other obligations, at law or in equity, expressed or implied, for any costs or liabilities arising out of or related to the presence, discharge, treatment recycling, storage, use, transportation, generation, disposal, migration or release of a hazardous or toxic waste, substance, material or constituent as defined in any applicable federal, state or local law, ordinance or regulation, or any other substance (including, without limitation, any asbestos, asbestos containing materials, polychlorinated biphenyls, oil, petroleum or any fraction thereof, or crude oil

or any fraction thereof) (collectively, "**Hazardous Materials**") on, in, under or from the Property (including without limitation all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder). Notwithstanding any other rights provided herein, subsequent to the execution of this Agreement but prior to Closing, Buyer shall have the right at its own expense to conduct an environmental assessment of the Property, provided that: (1) the proposed scope of the assessment is acceptable to the Seller (provided that Buyer may terminate this Agreement if Seller does not agree to the proposed scope of Buyer's assessment, in which case the Deposit shall be returned to Buyer, less one-half of all title and escrow cancellation charges); (2) with reasonable prior notice, Seller shall have the right to receive all data generated by this assessment (at no cost to Seller), to meet with Buyer's consultant, to receive copies of any report provided by Buyer's consultant, and to take and analyze such split samples at Seller's expense as Seller may request; (3) except as otherwise required by law, Buyer shall not contact any federal, state or local governmental agency without five (5) days prior notice to Seller; (4) prior to Closing, Buyer shall keep any information generated during this assessment as confidential unless required by law and shall not disclose such to any third party without prior approval of Seller, which shall be within Seller's subjective, good faith judgment; and (5) if this transaction fails to close, all data, notes, documents and reports (including all copies thereof) generated during this environmental assessment and all copies thereof shall be promptly provided to Seller (at no cost to Seller). Any information, reports, statements, documents, or records (hereinafter, "**Disclosures**") provided or made to Buyer or its consultants by Seller, its agents, employees or contractors concerning the environmental condition of the Property shall not be representations or warranties. Buyer shall not rely on such Disclosures. Buyer shall rely only on its own, and its consultant's, inspection of the Property. Any Disclosures by Seller shall be made solely for Seller's own benefit to facilitate the environmental assessment process, and Seller shall have no duty or obligation to make any Disclosures to Buyer, other than as required by California law as regards material facts concerning the Property actually known to Seller.

**9.3** Buyer agrees that any demolition, clean-up and remedial measures taken by or on behalf of Buyer with regard to the Property, or the soil or the groundwater thereunder, including any measure addressing environmental conditions of the Property, or the soil or the groundwater thereunder, shall be in accord with all applicable federal, state and local laws and regulations and done in an environmentally sound manner.

**9.4** Except as expressly provided in paragraph 9.6 below, Buyer expressly assumes any and all liability (if any) of any and all of the Indemnified Parties, and shall indemnify, protect, defend (with counsel reasonably selected by Seller) and hold harmless from and after the Closing Date each of the Indemnified Parties (as defined in paragraph 4.3.3 hereof) from, against and in respect of any and all actual or alleged liabilities, obligations, claims, damages, costs and expenses (including, without limitation, attorneys' fees, fines, penalties, consequential damages and remedial costs), known or unknown, suspected or unsuspected, now or hereafter existing or discovered, which are in any manner or way arising out of, related to or incurred in connection with: (a) subject to the immediately following subparagraphs (b), (c) and (d), the physical condition of the Property (including without limitation seismic, mechanical and/or structural condition); (b) the environmental condition of the Property and the surrounding

property (including without limitation all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), resulting from the Buyer's entries onto or activities on or about the Property prior to Closing, or resulting from any cause of action arising after the Closing from the ownership of the Property or operations thereon or thereabout by or on behalf of Buyer, its affiliates, agents, successors, tenants, transferees, tenants of transferees or any other "Owner or Operator" or other potentially responsible party or liable person (as defined in the Comprehensive Environmental Response Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended ("CERCLA") or the Hazardous Substances Account Act, California Health & Safety Code § 25300, et seq., as amended) of the Property at any time before or after the Closing Date; (c) (i) the release or migration of any Hazardous Materials into, onto or from the Property at any time after the Closing Date or the presence, discharge, treatment, recycling, storage, use, transportation, generation, migration or disposal by any person or entity of any Hazardous Materials which arise on or about the Property after the Closing, or may be deposited at, disposed on, or released or migrated onto or from the Property after the Closing (excluding, however, any such environmental matters to the extent caused by Seller's performance of the Required Remediation or Seller's entries onto the Property after the Closing, in accordance with paragraph 9.6 hereof); and (d) demolition, cleanup or other response or remedial measures with regard to environmental conditions on or around the Property resulting from the ownership, development or use of the Property by any of the foregoing persons or entities or any other Owner or Operator of (or other potentially responsible party concerning) the Property after the Closing Date (excluding, however, any such environmental matters to the extent caused by Seller's performance of the Required Remediation or Seller's entries onto the Property after the Closing, in accordance with paragraph 9.6 hereof).

9.5 Except as expressly provided in paragraph 9.6 below, Buyer hereby waives, releases and discharges the Indemnified Parties, and each of them, from any and all suits, causes of action, legal or administrative proceedings, liabilities, claims, damages, losses, costs and expenses of whatever kind, known or unknown, suspected or unsuspected, now or hereafter existing or discovered, in any manner or way connected with the physical condition of the Property, any latent or patent defects concerning same and any actual or alleged violations of law concerning same, including, without limitation, (i) any claim or action regarding the seismic, mechanical or structural condition of the Property and/or (ii) any claim or any action concerning the environmental condition of the Property, including without limitation under CERCLA and/or the provisions of California Health & Safety Code 25300, et seq., as amended, or under any other provision of federal, state or local law, which Buyer had, has or may have, based upon the past, present or future presence, discharge, treatment, recycling, use, migration, storage, generation, or release, or transportation to or from the Property of any Hazardous Materials or the environmental condition of the Property (including without limitation all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder). Buyer acknowledges that unknown and unsuspected Hazardous Materials may hereafter be discovered on or about the Property, and Buyer knowingly releases Seller from any and all liability related thereto. Buyer hereby agrees, represents and warrants that the matters released herein are not limited to matters which are known, disclosed, suspected or foreseeable, and Buyer hereby waives any and all rights and

benefits which it now has, or in the future may have, conferred upon Buyer by virtue of the provisions of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Buyer hereby agrees, represents and warrants that it is familiar with, has read, understands, and has consulted legal counsel of its choosing with respect to California Civil Code § 1542 and the matters now unknown to it which may have given, or which may hereinafter give rise to actions, legal or administrative proceedings, claims, demands, debts, controversies, damages, costs, losses, liabilities and expenses which are presently unknown, unanticipated and unsuspected, and Buyer further agrees, represents and warrants that the provisions of this paragraph 9.5 have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit the Indemnified Parties from any such unknown causes of action, legal or administrative proceedings, claims, demands, debts, controversies, damages, costs, losses, liabilities and expenses which are in any way related to this paragraph 9.5.

#### **9.6 Exclusive Rights and Obligations Regarding Disclosed Contamination.**

Notwithstanding any provision of this Agreement or of law to the contrary, Seller and Buyer agree as follows:

**9.6.1** Seller has disclosed and shall disclose to Buyer (including without limitation through the Property Documents) all unprivileged, material information possessed by Seller that certain Hazardous Materials are located on or under the Property as of the date of execution and delivery hereof, including without limitation in soil and/or groundwater thereunder. Furthermore, Buyer may discover prior to the Feasibility Deadline certain Hazardous Materials located on or under the Property, in addition to the Hazardous Materials disclosed by Seller to Buyer. Buyer shall immediately disclose to Seller any and all Hazardous Materials on or under the Property which are discovered by Buyer prior to the Feasibility Deadline which had not previously been disclosed by Seller to Buyer, as a condition to Seller's obligations to Buyer under this paragraph 9.6. Any and all Hazardous Materials disclosed to or discovered by Buyer prior to the Feasibility Deadline (but expressly excluding Hazardous Materials which migrated from property(ies) not owned or operated by Seller or any affiliates) are hereinafter collectively referred to as the "**Disclosed Contamination.**" As regards the Disclosed Contamination, Buyer agrees that:

(a) Seller reserves unto itself (and Buyer hereby grants to Seller), its successors, assigns, designees, and their respective agents, employees, independent contractors, attorneys, insurers and environmental consultants, a continuing license (without payment of rent or other monetary obligation) to enter the Property in order to investigate, assess, quantify, remediate and/or otherwise evaluate and respond to



the Disclosed Contamination (or any other contamination or Hazardous Materials now or hereafter known or suspected to be located on or under the Property) in the event and to the extent that Seller may elect to do so in its sole and absolute discretion from time to time (including without limitation installation of monitoring wells, passive product skimmers, vapor extraction equipment, excavation equipment, excavation or *in situ* remediation of soil or groundwater, extraction and treatment of groundwater, and/or any and all other investigation or remediation activities which Seller may elect to do from time to time); provided that (i) if Seller elects (in its sole and absolute discretion) to engage in any such activities, Seller agrees to conduct such activities in a manner which reasonably minimizes the impact upon and interference with Buyer's (and its tenants') ownership, possession and/or use of the Property, and (ii) except as provided in paragraph 9.6.3, Seller shall have absolutely no obligation to undertake any such act(s);

(b) Buyer shall cooperate with Seller, its successors, assigns, designees, agents, employees, independent contractors, attorneys, environmental consultants and insurers, in connection with any and all of the aforesaid activities, as reasonably requested from time to time by Seller or its designee(s) (at no cost or expense to Buyer);

(c) Seller shall be exclusively entitled to pursue, litigate, abandon, settle, receive and/or retain any and all recoveries (whether by way of indemnity, contribution, reimbursement, statutory or regulatory claim(s) or procedure(s), settlement, compromise, or otherwise) from any and all potentially responsible parties, insurers or other third parties whomsoever, which in any manner or way relate to or result from the Disclosed Contamination (or any other contamination or Hazardous Materials now or hereafter known or suspected to be located on or under the Property which Seller may elect in its sole discretion to investigate, assess, remediate or otherwise address), and Buyer hereby irrevocably and absolutely assigns to Seller any and all such rights, title, interest and claims, and Buyer shall have no right or claim in, to or against such recoveries, except as provided in subsection 9.6.1(d) below; and

(d) Notwithstanding the foregoing provisions of this paragraph 9.6.1, to the extent that Seller fails to comply with its obligations set forth in paragraph 9.6.2 below, Buyer shall have the right (to the extent required due to Seller's failure) to pursue any claim for reimbursement, contribution, indemnification or otherwise against any third parties and/or potentially responsible parties (other than any Indemnified Parties) with regard to the Disclosed Contamination.

**9.6.2** So long as Buyer fully and timely performs and observes each and all of its agreements in paragraph 9.6.1 above, Seller hereby agrees to indemnify, defend (with legal counsel selected by Seller) and hold harmless Buyer from and against any and all claims, actions, causes of action, governmental directive(s), liabilities, obligations, costs and expenses (including attorneys' fees) asserted by third parties to the extent the same are directly caused by the Disclosed Contamination, but only for so long as Buyer fully and reasonably cooperates (as requested from time to time by Seller) with Seller's defense of and/or response(s) to any such indemnified matter(s); provided, however, that in no event shall Seller be obligated to indemnify, defend or hold harmless Buyer from or against any "Excluded Claims." "Excluded Claims" shall mean any and all claims,

actions, causes of action, governmental directive(s), liabilities, obligations, costs and/or expenses (including attorneys' fees) as to which: (a) Seller receives written notification from Buyer after the date which is seven (7) years after the date of the Closing, (b) to the extent any such matter(s) or claims(s) is/are caused by the negligent or intentionally wrongful conduct of Buyer, its successors or assigns (including without limitation any and all tenants or other occupants) (c) to the extent any such claim(s) or matter(s) is/are asserted by Buyer, its agents, employees, independent contractors, successors or assigns, or (d) to the extent any such claim(s) or matter(s) is/are not directly caused by and attributable to the Disclosed Contamination. Buyer shall provide prompt notice to Seller of any claim or matter which is or may be indemnified against by Seller hereunder, and Seller shall have the sole and exclusive right and authority to respond to and control the defense, response, remediation, settlement or litigation concerning any and all such claim(s) and/or matter(s) and/or governmental directive(s) indemnified against by Seller hereunder with legal counsel selected by Seller in its sole and absolute discretion.

**9.6.3** Buyer and Seller acknowledge and agree that Seller shall not be obligated to undertake any assessment, response or remediation as regards any Disclosed Contamination, except as may be specifically required by governmental directive(s) from governmental agencies with appropriate jurisdiction over the Property and the Disclosed Contamination. Buyer and Seller acknowledge and agree that Seller may be required by governmental authorities before and/or after the Closing to conduct and perform certain environmental remediation on, near or about the Property concerning the Disclosed Contamination, which remediation may include soil and/or groundwater remediation and/or monitoring ("**Required Remediation**"). Buyer acknowledges that the Required Remediation may extend beyond the date of Closing for a substantial period of time. Buyer and Seller acknowledge and agree that Seller shall be solely responsible for completing all Required Remediation, at Seller's sole cost and expense, but only so long as Buyer fully cooperates with Seller in connection with the Required Remediation (including without limitation permitting Seller and/or its consultants, agents and independent contractors access to the Property at all reasonable times). Seller shall use its reasonable and diligent efforts to complete the Required Remediation (if any). Seller's obligations as regards the Required Remediation shall be strictly limited to Seller obtaining, and Seller shall have no obligation to perform any remediation beyond that required to obtain, governmental clearance certificates, "no further action" certifications (or their equivalent), and/or approvals from the lead governmental agency with jurisdiction over the Required Remediation.

**9.6.4** Seller's liability and Buyer's rights regarding the Disclosed Contamination and/or any other Hazardous Materials now or hereafter discovered at, on, near, about or under the Property are exclusively set forth in this paragraph 9.6, and Buyer irrevocably waives and releases (under paragraph 9.5) any and all other rights, remedies and/or recourse it otherwise might have had against Seller as regards same, whether or not arising under CERCLA, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the California Hazardous Waste Control Law, any common law theories of recovery (including negligence, nuisance, trespass or otherwise), and/or any other federal, state or local law now or hereafter existing or arising. Furthermore, Buyer irrevocably assigns to Seller any rights, remedies and/or

recourse Buyer might have against any of Seller's predecessors in interest and/or any and all other third parties as regards any and all Disclosed Contamination.

9.7 Each and all provisions and obligations set forth in this paragraph 9 shall survive Close of Escrow and delivery of the Grant Deed.

## **10. SELLER'S REPRESENTATIONS AND WARRANTIES**

The following constitute representations and warranties of Seller and shall also be true and correct as of the Close of Escrow (and the truth and accuracy of which shall constitute a condition to the Close of Escrow), and shall survive the Close of Escrow:

### **10.1 Authority.**

Seller has the legal power, right and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The individuals executing this Agreement on behalf of Seller have the legal power, right, and actual authority to bind Seller to the terms and conditions of this Agreement.

### **10.2 Requisite Action.**

As of the date hereof, all requisite action (corporate, partnership, or otherwise) has been taken by Seller in connection with the entering into this Agreement and the consummation of the transactions contemplated hereby.

### **10.3 Validity.**

This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.

### **10.4 Miscellaneous.**

#### **10.4.1 Violations.**

Except as disclosed to or otherwise known to Buyer, Mario Stavale (without any independent investigation, research or inquiry) has no actual knowledge of (a) any fire, zoning, health or building code, occupational safety, or any other federal, state or local violation with respect to the Property not heretofore removed and/or corrected, or (b) any legal or administrative action, proceeding, claim, arbitration or lawsuit affecting the Property which is pending before any court, agency or official, nor any such claim or action threatened in writing with respect to the Property. Seller represents that Mario Stavale is Seller's project manager concerning the Property and is knowledgeable about the Property.

#### **10.4.2 Zoning and Contracts.**

Except as disclosed to or otherwise known to Buyer, to the best of Mario Stavale's actual knowledge, without any independent investigation, research, or inquiry, (i) the Property is zoned in accordance with its present use; and (ii) neither Seller nor Seller's agents have entered into any contracts affecting the Property, including management, employment, maintenance, or other service contracts except for those contracts disclosed to Buyer.

### **11. BUYER'S REPRESENTATIONS AND WARRANTIES**

In addition to any express agreements of Buyer contained herein, the following constitute covenants, representations and warranties of Buyer and shall also be true and correct as of the Close of Escrow (and the truth and accuracy of which shall constitute a condition to the Close of Escrow), and shall survive the Close of Escrow:

#### **11.1 Authority.**

Buyer has the legal power, right and authority to enter into this Agreement and the documents referenced herein, and to consummate the transactions contemplated hereby. The individuals executing this Agreement and the documents referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof.

#### **11.2 Requisite Action.**

As of the date hereof, all requisite action (corporate, partnership or otherwise) has been taken by Buyer in connection with the entering into this Agreement and the documents referenced herein, and the consummation of the transactions contemplated hereby.

#### **11.3 Validity.**

This Agreement and all documents required hereby to be executed by Buyer are and shall be valid, legally binding obligations of and enforceable against Buyer (in accordance with their terms).

#### **11.4 Post-Closing Indemnity By Buyer.**

Buyer shall indemnify, defend (with counsel acceptable to Seller in its subjective, good faith discretion) and hold harmless the Indemnified Parties from and against any and all claims arising from any breach or default in performance of any obligation on Buyer's part to be performed after the Closing (if any) under the terms of this Agreement or any other document relating to the Property executed by Buyer and Seller or arising from any act, neglect, fault or omission of Buyer or its agents, contractors, employees or servants, and from and against all costs, attorneys' fees, expenses and liabilities incurred in connection with such claim or any action or

proceeding brought thereon. Buyer's obligations under this paragraph 11.4 shall survive the termination or Close of Escrow.

### **11.5 No Other Representations or Warranties.**

Except as set forth in paragraph 10 and as otherwise expressly stated in this Agreement, Seller has not made any representations or warranties to Buyer. Buyer acknowledges that it is purchasing the Property "**AS IS**," "**WHERE IS**" and "**WITH ALL FAULTS**," and Buyer is not relying upon any other statements, representations or warranties by Seller, its agents or representatives.

## **12. GENERAL ESCROW PROVISIONS.**

### **12.1 General Provisions.**

Notwithstanding anything to the contrary contained in this Agreement, Escrow Holder's General Provisions shall be incorporated by reference herein to the extent they are not inconsistent with the provisions of this Agreement. If there is any inconsistency between those General Provisions and any of the provisions of this Agreement, the provisions of this Agreement shall control. If any requirements relating to the duties or obligations of Escrow Holder are unacceptable to Escrow Holder, or if Escrow Holder requires additional instructions, the parties agree to make any deletions, substitutions and additions, as counsel for Buyer and Seller shall mutually approve, and which do not materially alter the terms of this Agreement. Any supplemental instructions shall be signed only as an accommodation to Escrow Holder and shall not be deemed to modify or amend the rights of Buyer and Seller, as between Buyer and Seller, unless those signed supplemental instructions expressly so provide.

### **12.2 Prorations.**

Property taxes and assessments on the Property shall be prorated between Buyer and Seller as of Close of Escrow, based on the most current statements and information available to Escrow Holder, and in accordance with custom in Los Angeles County. Buyer shall be responsible for the lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California for acts or events occurring at and after Close of Escrow. Notwithstanding the foregoing, or any other provision hereof, any and all property tax refund rights, claims and/or appeals for property taxes accruing prior to Close of Escrow shall be and remain the sole property of Seller.

### **12.3 Payment of Costs.**

Seller shall pay the premium charges for a C.L.T.A. Standard Owner's title policy, all city transfer taxes (if any), all documentary transfer taxes, and one-half (1/2) of the Escrow fee. Buyer shall pay the charge for one-half (1/2) of the Escrow fee, and all of the additional costs in connection with the Title Policy in excess of the cost of a C.L.T.A. Standard Owner's title policy (including without limitation that Buyer shall pay the entire

cost of C.L.T.A. endorsements ordered, if any). All other closing costs shall be paid per custom in Los Angeles County, California.

#### **12.4 Escrow Holder Authorize to Complete Documents.**

If necessary, Escrow Holder is authorized to insert the date Escrow closes as the date of documents conveying interests herein.

#### **12.5 Recordation of Documents.**

When all of the conditions in paragraphs 4 and 5 have been satisfied or waived, Escrow Holder shall cause the Grant Deed and any other recordable instruments to be filed for recordation in the Office of the Los Angeles County Recorder. Documentary transfer tax stamps shall be affixed to the Grant Deed after recording. Escrow Holder shall supply all parties listed in paragraph 14.3 with conformed copies of documents submitted for recording.

#### **12.6 Delivery of Documents and Funds.**

Upon Close of Escrow, Escrow Holder shall deliver to Seller and to Buyer all documents and funds to which each is entitled and for whose benefit those documents and funds were delivered to Escrow Holder, including specifically but without limitation:

**12.6.1** Deliver to Seller cash proceeds in the amount of the Purchase Price, plus any other amounts payable by Buyer under this Agreement, net of prorations, less any closing costs paid by Seller hereunder; and

**12.6.2** Record the Grant Deed and commit to issue the Title Policy.

#### **12.7 Performance by Escrow Holder.**

Escrow Holder is to be concerned only with those paragraphs under this Agreement where Escrow Holder is given instructions to perform certain acts or with those paragraphs where escrow holders generally and reasonably would be expected to act.

#### **12.8 Condemnation.**

If any material portion of the Property, or any material interest therein, is taken before the Closing Date as a result of the condemnation (including the filing of any notice of intended condemnation or proceedings in the nature of eminent domain, or negotiations, offers or agreements prior to or in lieu of condemnation or eminent domain proceedings), Seller shall immediately give Buyer notice of the taking. Within five (5) days after Seller delivers the notice, Buyer shall elect either (i) to terminate this Agreement in which event Buyer and Seller shall share equally in all Escrow costs, and the balance of the Deposit shall be refunded to Buyer, or (ii) proceed with the purchase of the Property and consummate this Agreement in accordance with its terms. If Buyer

elects option (ii), Seller shall, at the Closing, assign to Buyer all Seller's right, if any, to receive any portion of any condemnation award.

### **13. BROKERAGE COMMISSIONS**

Seller agrees that it is solely responsible for the payment of a brokerage commission to Seller's broker (Grubb & Ellis) pursuant to a separate written listing agreement. Buyer's broker (DAUM Commercial Real Estate Services) shall collect its commission solely from Seller's broker, and Seller shall have absolutely no liability therefor. Other than these commissions, Seller and Buyer each represent and warrant to the other that no broker or finder is entitled to any further commission or finder's fee resulting from any action on its part. Each party agrees to indemnify, defend, protect and hold the other harmless against any claim, loss, damage, cost or liability for any broker's commission or finder's fee asserted as a result of its own act or omission in connection with this transaction.

### **14. GENERAL PROVISIONS**

#### **14.1 Assignment.**

Until expiration of the Feasibility Period, Buyer shall have the right to assign this Agreement to another person or entity for any reason, provided that (a) Seller has reasonably approved of such assignee in advance in writing and within five (5) business days after receipt by Seller of such proposed assignee's financial statements and all other information reasonably requested by Seller, (b) the proposed assignee is controlled by, controls or is under common control with Buyer, and (c) Buyer and such assignee shall be and remain jointly and severally liable for all obligations of Buyer under this Agreement.

#### **14.2 Attorneys' Fees.**

In any action or dispute between the parties arising out of or in any way connected with this Agreement or the Escrow, the prevailing party in any such action or dispute (whether by way of judgment, arbitration award, mediation, settlement or otherwise, and whether or not suit is commenced) shall be entitled to collect from the other party the prevailing party's costs and expenses incurred in connection with such action or dispute, including, without limitation, all litigation costs and attorneys' fees.

#### **14.3 Approval and Notices.**

Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party or to Escrow Holder must be in writing and may be given by personal delivery, national recognized overnight mail courier, or by United States registered or certified mail, return receipt requested, to the party to whom the Notice is directed at the address of the party set forth below, or any other address as the parties may later designate:

To Seller: Boeing Realty Corporation  
4060 Lakewood Blvd., 6th Floor  
Long Beach, CA 90808  
Attn: Mario Stavale  
Telephone: (562) 627-3014  
Facsimile: (562) 627-3109

Copy to: Alan B. Guttenberg, Esq.  
Guttenberg, Rapson & Colvin LLP  
101 Lucas Valley Road, Ste. 216  
San Rafael, California 94903  
Telephone: (415) 507-4525  
Facsimile: (415) 507-4526

To Buyer: Gina Hsu  
880 West First Street, Ste. 507  
Los Angeles, CA 90012  
Telephone: (213) 620-9803  
Facsimile: (213) 250-1894

Copy to: Fulbright & Jaworski L.L.P.  
Attn: Robert C. Barnes  
865 So. Figueroa Street, 29th Fl.  
Los Angeles, CA 90017  
Telephone: (213) 892-9308  
Facsimile: (213) 680-4518



To Escrow Holder:

Chicago Title Insurance Company  
Attn: Lorri Beasley  
Chicago Title Insurance Company  
16969 Von Karman  
Irvine, CA 92606  
Telephone: (949) 263-2544  
Facsimile: (949) 752-8043

Any notice under this paragraph, whether served personally or delivered by mail, shall be deemed given only upon actual receipt by the intended party.

#### **14.4 Interpretation.**

This Agreement shall be construed under the laws of the State of California in effect at the time of the signing of this Agreement. The parties consent to the jurisdiction of the California courts with venue in Los Angeles County.

#### **14.5 Titles, Captions and Paragraphs.**

Titles and captions are for convenience only and shall not constitute a portion of this Agreement. References to paragraph numbers are to paragraphs as numbered in this Agreement unless expressly stated otherwise.

#### **14.6 Gender.**

As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates.

#### **14.7 No Waiver.**

A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

#### **14.8 Modifications.**

Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

#### **14.9 Severability.**

If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or

unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

#### **14.10 Merger of Prior Agreement and Understandings.**

This Agreement is an integrated agreement and contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect.

#### **14.11 Time of Essence.**

Time is expressly made of the essence with respect to the performance by Buyer and Seller of each and every obligation and condition of this Agreement in general and of the Feasibility Period and Close of Escrow in particular.

#### **14.12 Possession of Property.**

Buyer shall be entitled to possession of the Property only at Close of Escrow, free and clear of rights of parties in possession other than in connection with Seller's environmental remediation activities on the Property (if any) as permitted hereunder.

#### **14.13 Counterparts.**

This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding Agreement.

#### **14.14 Exhibits Incorporated by Reference.**

All exhibits attached to this Agreement are incorporated into this Agreement by reference.

#### **14.15 Computation of Time.**

The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day Escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, in which case the time shall be extended to the next business day.

#### **14.16 Other Documents; Cooperation of Parties.**

Each party agrees to sign any other and further instruments and documents as may be reasonably necessary or proper in order to accomplish the intent of this Agreement.

#### **14.17 Waiver of *Lis Pendens*.**

As a material part of the consideration under this Agreement, Buyer waives all rights to record a *lis pendens* against the Property under Section 409 of the California Code of Civil Procedure, or any other provision of law, if a dispute arises concerning this Agreement or the Property, it being recognized by Buyer that the Property is not unique. Buyer hereby waives any rights it has to seek and obtain equitable remedies, including, without limitation, the right to seek and obtain specific performance of this Agreement by Seller, and Buyer agrees that its only remedy for any breach of this Agreement shall be an action for damages since Buyer recognizes that Buyer can be adequately compensated in money damages if Seller breaches the Agreement. Buyer's obligations under this paragraph 14.17 shall survive the termination or Close of Escrow.

#### **14.18 Preliminary Change of Ownership Report.**

Buyer shall be fully and solely responsible for all matters in connection with the filing of a Preliminary Change of Ownership Report in accordance with the California Revenue and Taxation Code Section 480.3.

#### **14.19 Not an Offer.**

Seller's delivery of unsigned copies of this Agreement is solely for the purpose of review by the party to whom delivered, and neither the delivery nor any prior communications between the parties, whether oral or written, shall in any way be construed as an offer by Seller, nor in any way imply that Seller is under any obligation to enter the transaction which is the subject of this Agreement. The signing of this Agreement by Buyer constitutes an offer which shall not be deemed accepted by Seller unless and until Seller has signed this Agreement and delivered a duplicate original to Buyer.

#### **14.20 Maintenance of Property.**

Seller shall not commit waste to the Property from the Opening of Escrow through the Close of Escrow.

#### **14.21 Solicitation of Other Purchase Offers.**

Before satisfaction of the Feasibility Contingency (if any), Buyer acknowledges and agrees that Seller may continue to offer the Property for sale and to solicit offers (and enter contracts) for the purchase or lease of the Property (as "backup offers"), subject to Buyer's prior and superior rights to purchase the Property under this Agreement. After satisfaction of the Feasibility Contingency (if any), Seller will not engage in the foregoing marketing activities without Buyer's prior written consent, which consent will not be unreasonably withheld or delayed. In the event Seller timely receives the Non-Feasibility Notice from Buyer as provided hereunder, or upon any other termination of this Agreement, Seller shall be entitled to sell the Property to any person or entity on any terms, free and clear of any rights of Buyer hereunder or otherwise in or to the Property.

**14.22 Force Majeure Delays.** In the event that Seller's performance of its obligations (or Buyer's performance of its nonmonetary obligations) under this Agreement are delayed by reason of events beyond the control of Seller or Buyer (including without limitation acts of god, labor strikes, major interruption in supply of materials, fire, changes in laws, ordinances or governmental directives, disruption or delay of governmental services and/or other incidents of a force majeure nature)("Force Majeure Delay(s)"), then (at Seller's election in its sole and absolute discretion) the time for Seller's or Buyer's (as applicable) performance of its obligations hereunder and the Closing shall be extended by one business day for each day of such Force Majeure Delay(s), but in no event beyond one hundred fifty (150) days of aggregate Force Majeure Delay(s).

## **15. ARBITRATION**

**15.1 Resolution of Disputes.** Seller and Buyer have agreed on the following mechanisms in order to obtain prompt and expeditious resolution of all controversies, claims or disputes arising out of or in connection with the performance or non-performance of any terms of this Agreement and on the equitable and fair allocation as to the parties' obligations hereunder.

**15.1.1 Reference of Dispute.** Any dispute seeking damages, interpretation of this Agreement and any dispute seeking equitable relief, such as but not limited to specific enforcement of any provision hereof, shall be heard and determined by a referee pursuant to California Code of Civil Procedure Section 638, subdivision 1. The venue of any proceeding hereunder shall be in Los Angeles County, unless changed by order of the referee.

(a) **Procedure for Appointment.** The party seeking to resolve the dispute shall file in court and serve on the other party a complaint describing the matters in dispute. Service of the complaint shall be as prescribed by California law. At any time after service of the complaint, any party may request the designation of a referee to try the dispute. Thereafter Seller and Buyer shall use their best efforts to agree upon the selection of a referee from among the available referees at Judicial Arbitration and Mediation Service ("JAMS"). If Seller and Buyer are unable to agree upon a referee within ten days after a written request to do so by any party, then either may petition the judge of the Superior Court to whom the case is then assigned to appoint a referee from JAMS. For the guidance of the judge making the appointment of said referee, Seller and Buyer agree that the person so appointed shall be a retired judge from JAMS experienced in the subject matter of the dispute.

(b) **Standards for Decision.** To the extent consistent with the terms of this Agreement, the provisions of California Code of Civil Procedure, Sections 642, 643, 644 and 645 shall be applicable to dispute resolution by a referee hereunder. In an effort to clarify and amplify the provisions of California Code of Civil Procedure, Sections 644 and 645, Seller and Buyer agree that the referee shall decide issues of fact and law submitted by the parties for decision in the same manner as required for a trial by court as set forth in California Code of Civil Procedure, Sections 631.8 and 632, and California Rules of Court, Rule 232. The referee shall try the dispute and decide the

dispute according to all of the substantive and procedural law of the State of California, unless Seller and Buyer stipulate to the contrary. When the referee has decided the dispute, the referee shall also cause the preparation of a judgment based on said decision. The judgment to be entered by the Superior Court of Los Angeles County, California will be based upon the decision of the referee. Seller and Buyer agree that the referee's decision shall be appealable in the same manner as if the judge signing the judgment had tried the case.

**15.1.2 Cooperation.** Seller and Buyer shall diligently cooperate with one another and the person appointed to resolve the dispute, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute. If any party refuses to diligently cooperate, any other party, after first giving notice of its intent to rely on the provisions of this paragraph 15, incurs additional expenses or attorneys' fees solely as a result of such failure to diligently cooperate, the referee may award such additional expenses and attorneys' fees to the party giving such notice, even if such party is not the prevailing party in the dispute.

**15.1.3 Allocation of Costs.** The cost of the proceeding shall initially be borne equally by Seller and Buyer, but the prevailing party in such proceeding shall be entitled to recover, in addition to reasonable attorneys' fees and all other costs, its contribution for the reasonable cost of the referee as an item of recoverable costs. The referee shall include such costs in his judgment or award.

## **16. NO WARRANTIES BY BUYER**

It is expressly understood that Buyer is not making any warranty or representation with respect to any documents delivered to Seller by Buyer relating to Buyer's due diligence in investigating the Property and the documents shall not be relied on by Seller.

SELLER:

**BOEING REALTY CORPORATION**

By: 

STEPHEN J. BARKER

Its: \_\_\_\_\_

DIRECTOR-BUSINESS OPERATIONS

BUYER:

  
Robert Hsu

## EXHIBIT A

TENTATIVE MAP NO. 52172-03 REFLECTING TENTATIVE RECONFIGURATION OF  
THE PROPERTY

## EXHIBIT B

### GRANT DEED

RECORDING REQUESTED BY

WHEN RECORDED, MAIL TO:

Attention:

MAIL TAX STATEMENTS TO ADDRESS ABOVE

---

(Space above for Recorder's Use Only)

Parcel No. \_\_\_\_\_

CITY OF LOS ANGELES, COUNTY OF LOS ANGELES,  
STATE OF CALIFORNIA

[Statement Of Tax Due and Request that Stamps not be Made Part of the Permanent Record to be filed separate from the Grant Deed.]

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, BOEING REALTY CORPORATION, a California corporation ("Grantor"), hereby GRANTS to ROBERT HSU ("Grantee"), the real property in the City of Los Angeles, County of Los Angeles, State of California, described as follows:

Parcel A:       Parcels 1, 2, 3 and 4 of Tract 52172-03, as filed in Book \_\_\_\_\_,  
                    Pages \_\_\_\_\_, inclusive of Parcel Maps, in the Official Records  
                    of the County of Los Angeles, State of California.

SUBJECT TO:

1.       Current Taxes and Assessments.
2.       All other exceptions to title set forth in that certain title policy issued in favor of grantee as of the date of recordation of this deed.

3. All rights or interests discoverable by inquiry of parties in possession and/or all rights or interests which would be disclosed by an inspection of the property conveyed hereby.

By accepting this Deed, the grantee hereunder (on behalf of itself, its successors and assigns and all future owner(s) and/or lessee(s) of any interest(s) in the real property conveyed hereby or any portion hereof) covenants and agrees that it shall not cause or permit at any time the total Floor Area Ratio as to any parcel(s) conveyed hereby (or future reconfigurations of same) to exceed 0.50. This covenant shall run with the real property conveyed hereby and be binding upon and specifically enforceable against any present or future owner(s) and/or lessee(s) of any interest(s) in the real property conveyed hereby or any portion hereof. The grantor hereunder reserves the right to enforce this covenant and/or assign the rights to enforce the same to any person(s) or entity(ies) at any time(s) and from time to time.

**IN WITNESS WHEREOF**, the undersigned has caused this instrument to be executed as of the date indicated.

DATED: \_\_\_\_\_, 2000

BOEING REALTY CORPORATION

By: \_\_\_\_\_

Its: \_\_\_\_\_



# EXHIBIT "C"

WHEN RECORDED, MAIL TO:

BOEING REALTY CORPORATION  
4060 Lakewood Boulevard, 6th Floor  
Long Beach, California 90808-1700  
Attn: S. Mario Stavale

(Space Above Line for Recorder's Use Only)

## DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants is made as of December \_\_, 1998 by BOEING REALTY CORPORATION, a California corporation (formerly known as McDonnell Douglas Realty Company) ("Declarant"), pertaining to the approximately 170-acre tract described as Parcels 1 through 44 of Tract Map No. 52172 in the City of Los Angeles, as filed in Book \_\_, Pages \_\_ through \_\_, inclusive of Miscellaneous Maps, in the Official Records of the County of Los Angeles, State of California (the "Property").

Declarant hereby declares, for itself and all successors and assigns in all or any portion of the Property, that the Property shall be, sold, leased and conveyed subject to the following covenants, conditions and restrictions in perpetuity:

- (i) Development of the Property shall be limited to commercial and industrial uses;
- (ii) The Property shall not be used for agricultural purposes;
- (iii) No drinking water production wells shall be installed on the Property;
- (iv) No portion of the Property shall be used for residential purposes, hospitals for humans, health care facilities, schools for persons under 21 years of age, day-care centers for children (except those offered as a service in connection with a hotel, motel or temporary lodging facility) or any permanently occupied human habitation, including hotels and motels which are used as permanent residences (but not including, and instead permitting, hotels, motels and temporary lodging facilities which allow for temporary or extended stays).

The covenants, conditions and restrictions declared herein are interests in the Property which shall be appurtenant to and shall run with the Property, and the benefits and burdens of which shall bind and benefit all parties having or acquiring any right, title or interest in all or any portion of the Property. Upon recordation of this Declaration, every person or entity that now or hereafter owns or acquires any right, title or interest in or to all or any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision of this Declaration and every covenant, condition, and restriction created by this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired such interest in the Property. This Declaration is made for the direct, mutual and reciprocal benefit of all portions of the Property and shall create reciprocal rights and obligations as set forth in this Declaration.

Notwithstanding any provision of this Declaration, no breach of the covenants, conditions or restrictions, nor the enforcement of any provisions contained in this Declaration shall affect, impair, or defeat the lien or charge of any duly recorded mortgage or deed of trust encumbering any portion of the Property, or affect, impair, or defeat the interest of the mortgagee, or its successor by merger or acquisition, or any entity in which the mortgagee or such successor has a substantial direct or indirect ownership interest, or any entity which has a substantial direct or indirect ownership interest in the mortgagee (the mortgagee and such parties are collectively referred to as the "Mortgagee") pursuant to such a mortgage, provided that such mortgage is

made in good faith and for value. Except as provided in this paragraph, all covenants, conditions, restrictions, and provisions of this Declaration shall be binding upon and effective against any owners whose title is derived through foreclosure, deed in lieu of foreclosure, or trustee's sale during the period of their ownership, provided that no indemnity obligation under this Declaration shall bind or be effective against the Mortgagee or its first successor in interest or the grantee under a foreclosure, deed in lieu of foreclosure, or a trustee's sale conducted in connection with any Mortgagee's security interest in the Property.

This Declaration may be amended or terminated, or any provisions hereof modified or waived, only upon the prior written consent of (i) the Los Angeles Regional Water Quality Control Board ("Water Board") (or its successor or designee from time to time having primary jurisdiction as "lead agency" over the environmental condition of the Property) and (ii) the party owning the parcel as to which such amendment, termination, modification or waiver will apply and (iii) parties owning a majority of the Property (based on acreage). Any such termination, amendment, modification or waiver shall be effective upon the recording in the Official Records of Los Angeles County of an appropriate instrument in writing, executed and acknowledged by such majority of owners of the Property and approved by the Water Board (or such successor or designee).

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date and year first written above.

BOEING REALTY CORPORATION, a  
California corporation (formerly known as  
McDonnell Douglas Realty Company)

By: \_\_\_\_\_